The court's opinion presents an interesting anomaly by declaring that an unconstitutional act is not unconstitutional in the absence of intention to violate the constitution. The view that intention to violate and not a mere violation is the test, is sustained in *McGrane* v. *County of Nez Perce,* 18 Idaho 714, 112 Pac. 312, 32 L. R. A. (N. S.) 730, Ann. Cas. 1912 A. 165, where the precise question arose, the court saying, "—while such a ballot was not the secret ballot contemplated by the constitution, yet in view that the numbers were placed upon the ballots innocently and the voters accepted the ballots in good faith, believing them to be legal and in due form, the election was valid." And in *Pennington* v. *Hare,* 60 Minn. 146, 62 N. W. 116, it was said, "Where judges of elections, by reason of the mistake as to the law numbered the ballots of the electors without their knowledge, the ballots so numbered are legal and must be counted." The following cases approve the same doctrine on the principle that the voters should not be disfranchised by the misconduct of the election officials; *Lynip* v. *Buckner, 22* Nev. 426, 41 Pac. 762, 30 L. R. A. 354; *In re Town of Groton,* 118 N. Y. Supp. 417; *Perkins* v. *Bertrand,* 192 Ill. 58, 61 N. E. 405, 85 Am. St. Rep. 315; *Freshour* v. *Howard,* 142 Cal. 501, 77 Pac. 1101; *Farnham* v. *Boland,* 134 Cal. 151, 66 Pac. 200; *Carwile* v. *Jones,* 38 Mont. 590, 101 Pac. 153; *Town of Eufaula* v. *Gibson, 22* Okla. 507, 98 Pac. 565. But the court in *People ex rel. Sherman* v. *Persons,* 64 Hun. 327, said, "identifying marks on ballots will nullify secrecy even though put on by mistake and would be means of identfying votes, so votes should not be counted." *Woodward* v. *Sarsons,* L. R. 10 C. P. 733, 32 L. T. N. S. 867, held that marking the voter's number on the ballots at the time they were given out by the election officers made them void under statute prohibiting marks by which they could be identified. The court in *Sweeney* v.*Hjul,* 23 Nev. 409, 48 Pac. 1036, threw out a number of ballots on the ground that the electors were in fault for accepting them. However, where expressed statutory provisions were violated, the ballots are usually held void regardless of intention, as where ballots for election district No. 1 were used for district No. 2 (*People ex rel. Nichols* v. *Board of Canvassers,* 129 N. Y. 395, 29 N. E. 327, 14 L. R. A. 624; *Lippincott* v. *Felton,* 61 N. J. L. 291, 39 Atl. 646); election judges' initials were stamped on instead of written (*Berryman* v. *Megginson,* 229 Ill. 238, 82 N. E. 56, 120 Am. St. Rep. 237); initials put on wrong part of ballot (*People* v. *Rinehart,* 161 Mich. 585, 126 N. W. 704); ballots not on plain white paper, (*Catlett* v. *Knoxville Ry.* 120 Tenn. 699, 112 S. W. 559); space between candidates names less than that required by statute, (*Perkins* v. *Carraway,* 59 Miss. 222).

EVIDENCE—ADMISSIBILITY OF EVIDENCE OF PRIOR SIMILAR ACCIDENTS.—In an action for personal injuries due to defendant's alleged negligence in failing to provide a suitable stairway, the court refused to allow the following question: "How many times per day while you were standing in the rear of that theatre did you find people stumbling across that place?" On appeal by plaintiff, held, that "it now stands as the law in this state that evidence of prior similiar accidents in the same place, the conditions being shown to remain unchanged, is admissible to prove both notice of the defect and

negligence," however, the question was properly excluded in the above form since it assumed facts not proven, and was not restricted merely to prior accidents but included also subsequent accidents. *Branch* v. *Klatt,* (Mich. 1912) 138 N. W. 263.

The opinion discloses that the Michigan court has at different times entertained different views in respect to the admissibility of evidence of prior accidents occurring at the place presently in question. The main criticism against the admission of such evidence is that it operates to prejudice the party before the jury and to confuse the issues. The entire opinion in *Woodworth* v. *Detroit United Railway,* 153 Mich. 108 is devoted to the settlement of this question and the conclusion is definitely set forth that "such testimony has a legitimate bearing upon the issue of negligence" and must be deemed admissible to establish both notice and negligence. In this connection see: *Bloomington* v. *Legg,* 151 Ill. 9; *Taylorville* v. *Stafford,* 196 Ill. 288; *Martinez* v. *Planel,* 36 Ill. 578; *Fordham* v. *Gouverneur Village,* 160 N. Y. 541; *Hunt* v. *Dubuque,* 96 Ia. 314; WIGMORE, EVIDENCE, §§ 252, 458.

EVIDENCE—PAROL EVIDENCE TO CONSTRUE WRITTEN INSTRUMENT.—Action upon a fire insurance policy by which the defendant company insured certain household goods of "Hammond Bros." for a specified period and while located in a specified building occupied by assured as a hotel and saloon. Plaintiff maintained that this policy covered not only the partnership property of Hammond Bros. but also the individual property of the partners. Defendant disputed the latter contention. *Held,* that parol evidence might be introduced to show that the term "Hammond Bros." was intended to be descriptive of both the partnership and of the individuals comprising it. *Hammond* v. *Capitol City Mutual Fire Ins. Co.* (Wis. 1912) 138 N. W. 92.

The court, admitting that decisions might be found taking a view contrary to that presently adopted, said, "But no good reason is perceived why parol proof of such conversations or negotiations is not admissible to solve a latent ambiguity in a writing, thus enabling the court to determine upon what precise subject matter the minds of the parties met. Nothing in the writing is thereby contradicted, nothing subtracted, nothing added. Cases not infrequently arise where members of a partnership have placed their individual names to an obligation and the question has been debated whether parol evidence might be availed of to prove that the obligation was actually incurred for and in behalf of the partnership. The instant case, however, presents a converse situation. An apparent partnership obligation is shown by parol evidence to include not only the partnership but also the individual members thereof as beneficiaries. Principles pertinent to the discussion are treated in the following cases: *L'Engle* v. *Scottish Union &c Ins. Co.* 48 Fla. 82; 67 L. R. A. 581: *Reed* v. *Insurance Co.,* 95 U. S. 23; *Washington Mutual Fire Ins. Co.* v. *St. Mary's Seminary,* 52 Mo. 480: *Davis* v. *Turner,* 120 Fed. 605: *Hogan* v *Wallace* 166 Ill. 328.

INSURANCE.—ELECTION TO REBUILD.—REMEDY OF THE INSURED.—An insurance company, in the exercise of its reserved option "to repair, rebuild or re-